

1 AN ACT

2 relating to contracts by governmental entities and related
3 professional services and to public works performance and payment
4 bonds.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

7 SECTION 1.01. Section 2253.021, Government Code, is amended
8 by adding Subsection (h) to read as follows:

9 (h) A reverse auction procedure may not be used to obtain
10 services related to a public work contract for which a bond is
11 required under this section. In this subsection, "reverse auction
12 procedure" has the meaning assigned by Section 2155.062 or a
13 procedure similar to that described by Section 2155.062.

14 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

15 SECTION 2.01. Section 11.168, Education Code, as added by
16 Chapter 979, Acts of the 79th Legislature, Regular Session, 2005,
17 is amended to read as follows:

18 Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR
19 CERTAIN PURPOSES; EXCEPTION. (a) Except as provided by Subsection
20 (b), the [The] board of trustees of a school district may not enter
21 into an agreement authorizing the use of school district employees,
22 property, or resources for the provision of materials or labor for
23 the design, construction, or renovation of improvements to real
24 property not owned or leased by the district.

1 (b) This section does not prohibit the board of trustees of
2 a school district from entering into an agreement for the design,
3 construction, or renovation of improvements to real property not
4 owned or leased by the district if the improvements benefit real
5 property owned or leased by the district. Benefits to real property
6 owned or leased by the district include the design, construction,
7 or renovation of highways, roads, streets, sidewalks, crosswalks,
8 utilities, and drainage improvements that serve or benefit the real
9 property owned or leased by the district.

10 SECTION 2.02. Sections 44.031(a) and (f), Education Code,
11 are amended to read as follows:

12 (a) Except as provided by this subchapter, all school
13 district contracts for the purchase of goods and services, except
14 contracts for the purchase of produce or vehicle fuel, valued at
15 \$25,000 or more in the aggregate for each 12-month period shall be
16 made by the method, of the following methods, that provides the best
17 value for the district:

18 (1) competitive bidding for services other than
19 construction services;

20 (2) competitive sealed proposals for services other
21 than construction services;

22 (3) a request for proposals, for services other than
23 construction services;

24 (4) a catalogue purchase as provided by Subchapter B,
25 Chapter 2157, Government Code;

26 (5) an interlocal contract;

27 (6) a method provided by Chapter 2264, Government

1 Code;

2 (7) [~~a design/build contract;~~

3 [~~(7) a contract to construct, rehabilitate, alter, or~~
4 ~~repair facilities that involves using a construction manager;~~

5 [~~(8) a job order contract for the minor construction,~~
6 ~~repair, rehabilitation, or alteration of a facility;~~

7 [~~(9)~~] the reverse auction procedure as defined by
8 Section 2155.062(d), Government Code; or

9 (8) [~~(10)~~] the formation of a political subdivision
10 corporation under Section 304.001, Local Government Code.

11 (f) This section does not apply to a contract for
12 professional services rendered, including services of an
13 architect, attorney, engineer, or fiscal agent. A school district
14 may, at its option, contract for professional services rendered by
15 a financial consultant or a technology consultant in the manner
16 provided by Section 2254.003, Government Code, in lieu of the
17 methods provided by this section.

18 SECTION 2.03. Subchapter B, Chapter 44, Education Code, is
19 amended by adding Section 44.0351 to read as follows:

20 Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the
21 extent prohibited by other law and to the extent consistent with
22 this subchapter, a school district may use competitive bidding to
23 select a vendor as authorized by Section 44.031(a)(1).

24 (b) Except as provided by this subsection, Subchapter B,
25 Chapter 271, Local Government Code, does not apply to a competitive
26 bidding process under this subchapter. Sections 271.026,
27 271.027(a), and 271.0275, Local Government Code, apply to a

1 competitive bidding process under this subchapter.

2 (c) A school district shall award a competitively bid
3 contract at the bid amount to the bidder offering the best value for
4 the district. In determining the best value for the district, the
5 district is not restricted to considering price alone, but may
6 consider any other factors stated in the selection criteria. The
7 selection criteria may include the factors listed in Section
8 44.031(b).

9 SECTION 2.04. Subchapter B, Chapter 44, Education Code, is
10 amended by adding Section 44.0361 to read as follows:

11 Sec. 44.0361. COMPETITIVE SEALED PROPOSALS. (a) In
12 selecting a vendor through competitive sealed proposals as
13 authorized by Section 44.031(a)(2), a school district shall follow
14 the procedures prescribed by this section.

15 (b) The district shall prepare a request for competitive
16 sealed proposals that includes information that vendors may require
17 to respond to the request. The district shall state in the request
18 for proposals the selection criteria that will be used in selecting
19 the successful offeror.

20 (c) The district shall receive, publicly open, and read
21 aloud the names of the offerors and, if any are required to be
22 stated, all prices stated in each proposal. Not later than the 45th
23 day after the date on which the proposals are opened, the district
24 shall evaluate and rank each proposal submitted in relation to the
25 published selection criteria.

26 (d) The district shall select the offeror that offers the
27 best value for the district based on the published selection

1 criteria and on its ranking evaluation. The district shall first
2 attempt to negotiate with the selected offeror a contract. The
3 district may discuss with the selected offeror options for a scope
4 or time modification and any price change associated with the
5 modification. If the district is unable to negotiate a contract
6 with the selected offeror, the district shall, formally and in
7 writing, end negotiations with that offeror and proceed to the next
8 offeror in the order of the selection ranking until a contract is
9 reached or all proposals are rejected.

10 (e) In determining the best value for the district, the
11 district is not restricted to considering price alone, but may
12 consider any other factors stated in the selection criteria.

13 SECTION 2.05. Subchapter B, Chapter 44, Education Code, is
14 amended by adding Section 44.0411 to read as follows:

15 Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or
16 specifications is necessary after the performance of a contract is
17 begun or if it is necessary to decrease or increase the quantity of
18 work to be performed or of materials, equipment, or supplies to be
19 furnished, the district may approve change orders making the
20 changes.

21 (b) The total contract price may not be increased because of
22 the changes unless additional money for increased costs is approved
23 for that purpose from available money or is provided for by the
24 authorization of the issuance of time warrants.

25 (c) The district may grant general authority to an
26 administrative official to approve the change orders.

27 (d) A contract with an original contract price of \$1 million

1 or more may not be increased under this section by more than 25
2 percent. If a change order for a contract with an original contract
3 price of less than \$1 million increases the contract amount to \$1
4 million or more, subsequent change orders may not increase the
5 revised contract amount by more than 25 percent.

6 SECTION 2.06. Subchapter A, Chapter 46, Education Code, is
7 amended by adding Section 46.0111 to read as follows:

8 Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN,
9 CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL
10 FACILITY. (a) In this section:

11 (1) "Net proceeds" means the difference between the
12 amount recovered by or on behalf of a school district in an action,
13 by settlement or otherwise, and the legal fees and litigation costs
14 incurred by the district in prosecuting the action.

15 (2) "State's share" means an amount equal to the
16 district's net proceeds from the recovery multiplied by a
17 percentage determined by dividing the amount of state assistance
18 under this subchapter used to pay the principal of and interest on
19 bonds issued in connection with the instructional facility that is
20 the subject of the action by the total amount of principal and
21 interest paid on the bonds as of the date of the judgment or
22 settlement.

23 (b) A school district that brings an action for recovery of
24 damages for the defective design, construction, renovation, or
25 improvement of an instructional facility financed by bonds for
26 which the district receives state assistance under this subchapter
27 shall provide the commissioner with written notice of the action.

1 (c) The commissioner may join in the action on behalf of the
2 state to protect the state's share in the action.

3 (d) A school district shall use the net proceeds from an
4 action brought by the district for the defective design,
5 construction, renovation, or improvement of an instructional
6 facility financed by bonds for which the district receives state
7 assistance under this subchapter to repair the defective design,
8 construction, renovation, or improvement of the instructional
9 facility on which the action is brought or to replace the facility.
10 Section 46.008 applies to the repair.

11 (e) The state's share is state property. The school
12 district shall send to the comptroller any portion of the state's
13 share not used by the school district to repair the defective
14 design, construction, renovation, or improvement of the
15 instructional facility on which the action is brought or to replace
16 the facility. Section 42.258 applies to the state's share under
17 this subsection.

18 SECTION 2.07. Section 791.011, Government Code, is amended
19 by amending Subsection (e) and adding Subsections (h) and (i) to
20 read as follows:

21 (e) An interlocal contractual payment must be in an amount
22 that fairly compensates the performing party for the services or
23 functions performed under the contract. This subsection does not
24 prohibit a local government from being reimbursed for its expenses
25 or from sharing in the profits or revenue of the performing party
26 for insurance products if the reimbursement or sharing assists in
27 the management of a local government.

1 (h) An interlocal contract may not be used to purchase
2 engineering or architectural services unless the services are in
3 connection with the design or construction of a specific facility
4 to be jointly owned, used, or financed by the parties to the
5 contract.

6 (i) An interlocal contract may not be used to purchase
7 construction services unless the services are in connection with
8 the design or construction of a specific facility to be jointly
9 owned, used, or financed by the parties to the contract or:

10 (1) the services are in connection with a job order
11 contract;

12 (2) the governing body of the governmental entity for
13 whom the work will ultimately be performed approves the purchase in
14 open session;

15 (3) public notice is provided in a manner consistent
16 with a direct contract for job order contracting services; and

17 (4) work orders under the contract comply with Section
18 2264.353.

19 SECTION 2.08. Section 2166.2525, Government Code, is
20 amended to read as follows:

21 Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The
22 ~~[commission shall adopt rules that determine the circumstances for~~
23 ~~use of each]~~ method of contracting allowed under this subchapter
24 for design and construction services is any method provided by
25 Chapter 2264. ~~[In developing the rules, the commission shall~~
26 ~~solicit advice and comment from design and construction~~
27 ~~professionals regarding the criteria the commission will use in~~

1 ~~determining which contracting method is best suited for a project.]~~

2 SECTION 2.09. Section 2166.259, Government Code, is amended
3 by amending Subsections (a), (b), (d), and (e) and adding
4 Subsections (b-1), (b-2), and (b-3) to read as follows:

5 (a) This section applies only in relation to [~~a contract~~
6 ~~for~~] a public works project that will involve a contract or
7 aggregated multiple contracts with [~~has~~] an estimated cost of more
8 than \$1 [~~\$20~~] million.

9 (b) The commission shall maintain a small contractor
10 participation assistance program to ensure full opportunity for
11 participation in public works projects by small contractors. The
12 program must include a:

13 (1) system for the centralized purchase of necessary
14 insurance coverage for the public works project that is required
15 under Subsection (c);

16 (2) public outreach plan to:

17 (A) provide public information about the
18 program; and

19 (B) encourage small contractors to participate
20 in the program;

21 (3) technical assistance plan to aid small contractors
22 in developing the skills necessary to participate in the program in
23 accordance with Subsection (d); [~~and~~]

24 (4) financing assistance plan to provide
25 administrative and other assistance to small contractors in
26 obtaining necessary financing arrangements to make the
27 participation of those contractors possible; and

1 (5) method developed with guidance from the Texas
2 Department of Insurance to assist small contractors in:

3 (A) preparing bond application packages for
4 public works projects in a format acceptable to bond underwriters;
5 and

6 (B) obtaining bonds required to participate in
7 public works projects.

8 (b-1) The commission shall designate a commission employee
9 to serve as small contractor participation assistance coordinator.
10 In addition to any other responsibilities, the coordinator shall:

11 (1) administer the small contractor participation
12 assistance program established under this section;

13 (2) with the assistance of the Texas Department of
14 Insurance, provide to small contractors technical assistance and
15 training related to preparing bond application packages and
16 obtaining bonds; and

17 (3) with the assistance of the facilities construction
18 and space management division of the commission, provide to small
19 contractors technical assistance related to participation in the
20 program.

21 (b-2) The small contractor participation assistance
22 coordinator shall submit an annual report describing the activities
23 and progress of the program to the governor, the lieutenant
24 governor, and each member of the legislature.

25 (b-3) Funding appropriated to the commission for the small
26 contractor participation assistance program may only be used for
27 that program.

1 (d) A technical assistance plan adopted by the commission
2 must include information on and assistance in:

3 (1) bid estimation, the bidding process, scheduling,
4 and the understanding of bid documents;

5 (2) the reading of construction drawings and other
6 analogous documents;

7 (3) business accounting, bonds, and bond
8 requirements;

9 (4) negotiation with general contractors; ~~and~~

10 (5) other technical and administrative matters
11 considered appropriate and necessary given the complexity and scope
12 of the public works project; and

13 (6) small contractor safety training to ensure
14 compliance with federal job site safety standards.

15 (e) The commission shall ~~may~~ negotiate contracts with
16 persons or firms having expertise and any required license in the
17 areas that must be included in the commission's technical
18 assistance plan to provide the information and assistance.

19 SECTION 2.10. Section 2254.003(b), Government Code, is
20 amended to read as follows:

21 (b) The professional fees under the contract ~~+~~

22 ~~[(1) must be consistent with and not higher than the~~
23 ~~recommended practices and fees published by the applicable~~
24 ~~professional associations; and~~

25 ~~[(2)]~~ may not exceed any maximum provided by law.

26 SECTION 2.11. Subchapter A, Chapter 2254, Government Code,
27 is amended by adding Section 2254.007 to read as follows:

1 or part of a facility at the contracted price.

2 (6) "Public work contract" means a contract for
3 constructing, altering, or repairing a public building or carrying
4 out or completing any public work.

5 Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL
6 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.

7 This chapter applies to a public work contract made by a
8 governmental entity or quasi-governmental entity authorized by
9 state law to make a public work contract, including:

10 (1) a state agency as defined by Section 2151.002,
11 including the Texas Building and Procurement Commission;

12 (2) a local government, including:

13 (A) a county;

14 (B) a municipality;

15 (C) a school district;

16 (D) any other special district or authority,
17 including a hospital district, a defense base development authority
18 established under Chapter 379B, Local Government Code, and a
19 conservation and reclamation district, including a river authority
20 or any other type of water district; and

21 (E) any other political subdivision of this
22 state;

23 (3) a public junior college as defined by Section
24 61.003, Education Code;

25 (4) any entity owned by a municipality; and

26 (5) any other entity that owns or operates a facility
27 for the benefit of a municipality or county.

1 Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW
2 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this
3 section, this chapter prevails over any other law relating to a
4 public work contract.

5 (b) This chapter does not prevail over a conflicting
6 provision in a law relating to contracting with a historically
7 underutilized business.

8 (c) This chapter does not prevail over a conflicting
9 provision that requires the use of competitive bidding in:

10 (1) a charter of a home-rule municipality; or

11 (2) a rule of a county, a defense base development
12 authority, or a conservation and reclamation district, including a
13 river authority or any other type of water district.

14 (d) The governing body of a governmental entity to which
15 Subsection (c) applies may elect to have this chapter overrule the
16 conflicting provision in the charter or rule.

17 (e) This chapter does not prevail over a conflicting
18 provision in an ordinance or resolution passed by the governing
19 body of a municipally owned electric utility in a procedure
20 described by Section 252.022(c), Local Government Code, that:

21 (1) requires the use of competitive bidding or
22 competitive sealed proposals; or

23 (2) prescribes a design-build procurement procedure
24 that conflicts with this chapter.

25 Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF
26 TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

27 (1) a contract entered into by the Texas Department of

1 Transportation; or

2 (2) a project that receives money from a state or
3 federal highway fund.

4 Sec. 2264.005. APPLICABILITY: INSTITUTIONS OF HIGHER
5 EDUCATION. (a) In this section, "institution of higher
6 education," "public junior college," and "university system" have
7 the meanings assigned by Section 61.003, Education Code.

8 (b) This chapter applies to a public junior college but does
9 not apply to:

10 (1) any other institution of higher education; or

11 (2) a university system.

12 Sec. 2264.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES.
13 This chapter does not apply to a regional tollway authority under
14 Chapter 366, Transportation Code.

15 [Sections 2264.007-2264.050 reserved for expansion]

16 SUBCHAPTER B. GENERAL POWERS AND DUTIES

17 Sec. 2264.051. RULES. A governmental entity may adopt
18 rules as necessary to implement this chapter.

19 Sec. 2264.052. NOTICE REQUIREMENTS. (a) A governmental
20 entity shall advertise or publish notice of requests for bids,
21 proposals, or qualifications in a manner prescribed by law.

22 (b) For a contract entered into by a governmental entity
23 under a method provided by this chapter, the governmental entity
24 shall publish notice of the time and place the bid or proposal or
25 request for qualifications will be received and opened in a manner
26 prescribed by law.

27 Sec. 2264.053. DELEGATION OF AUTHORITY. (a) The governing

1 body of a governmental entity may delegate its authority under this
2 chapter regarding an action authorized or required by this chapter
3 to a designated representative, committee, or other person.

4 (b) The governmental entity shall provide notice of the
5 delegation, the limits of the delegation, and the name or title of
6 each person designated under Subsection (a) by rule or in the
7 request for bids, proposals, or qualifications or in an addendum to
8 the request.

9 Sec. 2264.054. RIGHT TO WORK. (a) This section applies to
10 a governmental entity when the governmental entity is engaged in:

- 11 (1) procuring goods or services under this chapter;
12 (2) awarding a contract under this chapter; or
13 (3) overseeing procurement or construction for a
14 public work or public improvement under this chapter.

15 (b) In engaging in an activity to which this section
16 applies, a governmental entity:

- 17 (1) may not consider whether a person is a member of or
18 has another relationship with any organization; and
19 (2) shall ensure that its bid specifications and any
20 subsequent contract or other agreement do not deny or diminish the
21 right of a person to work because of the person's membership or
22 other relationship status with respect to an organization.

23 Sec. 2264.055. CRITERIA TO CONSIDER. (a) In determining
24 the award of a contract under this chapter, the governmental entity
25 may consider:

- 26 (1) the price;
27 (2) the offeror's experience and reputation;

1 (3) the quality of the offeror's goods or services;

2 (4) the impact on the ability of the governmental
3 entity to comply with rules relating to historically underutilized
4 businesses;

5 (5) the offeror's safety record;

6 (6) the offeror's proposed personnel;

7 (7) whether the offeror's financial capability is
8 appropriate to the size and scope of the project; and

9 (8) any other relevant factor specifically listed in
10 the request for bids, proposals, or qualifications.

11 (b) In determining the award of a contract under this
12 chapter, the governmental entity shall:

13 (1) consider and apply any existing laws, including
14 any criteria, related to historically underutilized businesses;
15 and

16 (2) consider and apply any existing laws, rules, or
17 applicable municipal charters, including laws applicable to local
18 governments, related to the use of women, minority, small, or
19 disadvantaged businesses.

20 Sec. 2264.056. USING METHOD OTHER THAN COMPETITIVE BIDDING
21 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA. (a)
22 The governing body of a governmental entity that considers a
23 construction contract using a method authorized by this chapter
24 other than competitive bidding must, before advertising, determine
25 which method provides the best value for the governmental entity.

26 (b) The governmental entity shall base its selection among
27 offerors on applicable criteria listed for the particular method

1 used. The governmental entity shall publish in the request for
2 proposals or qualifications the criteria that will be used to
3 evaluate the offerors, and the applicable weighted value for each
4 criterion.

5 (c) The governmental entity shall document the basis of its
6 selection and shall make the evaluations public not later than the
7 seventh day after the date the contract is awarded.

8 Sec. 2264.057. ARCHITECT OR ENGINEER SERVICES. (a) An
9 architect or engineer required to be selected or designated under
10 this chapter has full responsibility for complying with Chapter
11 1051 or 1001, Occupations Code, as applicable.

12 (b) If the selected or designated architect or engineer is
13 not a full-time employee of the governmental entity, the
14 governmental entity shall select the architect or engineer on the
15 basis of demonstrated competence and qualifications as provided by
16 Section 2254.004.

17 Sec. 2264.058. USE OF OTHER PROFESSIONAL SERVICES. (a)
18 Independently of the contractor, construction manager-at-risk, or
19 design-build firm, the governmental entity shall provide or
20 contract for the construction materials engineering, testing, and
21 inspection services and the verification testing services
22 necessary for acceptance of the facility by the governmental
23 entity.

24 (b) The governmental entity shall select the services for
25 which it contracts under this section in accordance with Section
26 2254.004.

27 Sec. 2264.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS

1 REQUIRED. A person who submits a bid, proposal, or qualification to
2 a governmental entity shall seal it before delivery.

3 [Sections 2264.060-2264.100 reserved for expansion]

4 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

5 Sec. 2264.101. CONTRACTS FOR FACILITIES: COMPETITIVE
6 BIDDING. (a) In this chapter, "competitive bidding" is a
7 procurement method by which a governmental entity contracts with a
8 contractor for the construction, alteration, rehabilitation, or
9 repair of a facility by awarding the contract to the lowest
10 responsible bidder.

11 (b) Except as otherwise provided by this chapter or other
12 law, a governmental entity may contract for the construction,
13 alteration, rehabilitation, or repair of a facility only after the
14 entity advertises for bids for the contract in a manner prescribed
15 by law, receives competitive bids, and awards the contract to the
16 lowest responsible bidder.

17 Sec. 2264.102. USE OF ARCHITECT OR ENGINEER. The
18 governmental entity shall select or designate an architect or
19 engineer in accordance with Chapter 1051 or 1001, Occupations Code,
20 as applicable, to prepare the construction documents required for a
21 project to be awarded by competitive bidding.

22 Sec. 2264.103. PREPARATION OF REQUEST. The governmental
23 entity shall prepare a request for competitive bids that includes
24 construction documents, estimated budget, project scope, estimated
25 project completion date, and other information that a contractor
26 may require to submit a bid.

27 Sec. 2264.104. EVALUATION OF OFFERORS. The governmental

1 entity shall receive, publicly open, and read aloud the names of the
2 offerors and their bids.

3 Sec. 2264.105. SELECTION OF OFFEROR. Not later than the
4 seventh day after the date the contract is awarded, the
5 governmental entity shall document the basis of its selection and
6 shall make the evaluations public.

7 Sec. 2264.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING
8 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise
9 specifically provided by this section, Subchapter B, Chapter 271,
10 Local Government Code, does not apply to a competitive bidding
11 process conducted under this chapter. Sections 271.026,
12 271.027(a), and 271.0275, Local Government Code, apply to a
13 competitive bidding process conducted under this chapter by a
14 governmental entity as defined by Section 271.021, Local Government
15 Code.

16 [Sections 2264.107-2264.150 reserved for expansion]

17 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

18 Sec. 2264.151. CONTRACTS FOR FACILITIES: COMPETITIVE
19 SEALED PROPOSALS. (a) In this chapter, "competitive sealed
20 proposals" is a procurement method by which a governmental entity
21 requests proposals, ranks the offerors, negotiates as prescribed,
22 and then contracts with a general contractor for the construction,
23 rehabilitation, alteration, or repair of a facility.

24 (b) In selecting a contractor through competitive sealed
25 proposals, a governmental entity shall follow the procedures
26 provided by this subchapter.

27 Sec. 2264.152. USE OF ARCHITECT OR ENGINEER. The

1 governmental entity shall select or designate an architect or
2 engineer to prepare construction documents for the project.

3 Sec. 2264.153. PREPARATION OF REQUEST. The governmental
4 entity shall prepare a request for competitive sealed proposals
5 that includes construction documents, selection criteria and the
6 weighted value for each criterion, estimated budget, project scope,
7 estimated project completion date, and other information that a
8 contractor may require to respond to the request.

9 Sec. 2264.154. EVALUATION OF OFFERORS. (a) The
10 governmental entity shall receive, publicly open, and read aloud
11 the names of the offerors and any monetary proposals made by the
12 offerors.

13 (b) Not later than the 45th day after the date of opening the
14 proposals, the governmental entity shall evaluate and rank each
15 proposal submitted in relation to the published selection criteria.

16 Sec. 2264.155. SELECTION OF OFFEROR. (a) The governmental
17 entity shall select the offeror that submits the proposal that
18 offers the best value for the governmental entity based on:

19 (1) the selection criteria in the request for proposal
20 and the weighted value for those criteria in the request for
21 proposal; and

22 (2) its ranking evaluation.

23 (b) The governmental entity shall first attempt to
24 negotiate a contract with the selected offeror. The governmental
25 entity and its architect or engineer may discuss with the selected
26 offeror options for a scope or time modification and any price
27 change associated with the modification.

1 (c) If the governmental entity is unable to negotiate a
2 contract with the selected offeror, the governmental entity shall,
3 formally and in writing, end negotiations with that offeror and
4 proceed to the next offeror in the order of the selection ranking
5 until a contract is reached or all proposals are rejected.

6 [Sections 2264.156-2264.200 reserved for expansion]

7 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

8 Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION
9 MANAGER-AGENT. (a) In this chapter, the "construction
10 manager-agent method" is a delivery method by which a governmental
11 entity contracts with a construction manager-agent, instead of a
12 general contractor, to provide administrative services and to
13 manage multiple contracts with various construction prime
14 contractors.

15 (b) A construction manager-agent is a sole proprietorship,
16 partnership, corporation, or other legal entity that serves as the
17 agent for the governmental entity by providing construction
18 administration and management services described by Subsection (a)
19 for the construction, rehabilitation, alteration, or repair of a
20 facility.

21 (c) A governmental entity may retain a construction
22 manager-agent for assistance in the construction, rehabilitation,
23 alteration, or repair of a facility only as provided by this
24 subchapter.

25 Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION
26 MANAGER-AGENT. The contract between the governmental entity and
27 the construction manager-agent may require the construction

1 manager-agent to provide:

- 2 (1) administrative personnel;
- 3 (2) equipment necessary to perform duties under this
- 4 subchapter;
- 5 (3) on-site management; and
- 6 (4) other services specified in the contract.

7 Sec. 2264.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A

8 construction manager-agent may not:

- 9 (1) self-perform any aspect of the construction,
- 10 rehabilitation, alteration, or repair of the facility;
- 11 (2) be a party to a construction subcontract for the
- 12 construction, rehabilitation, alteration, or repair of the
- 13 facility; or
- 14 (3) provide project bonding for the construction,
- 15 rehabilitation, alteration, or repair of the facility.

16 Sec. 2264.204. FIDUCIARY CAPACITY OF CONSTRUCTION

17 MANAGER-AGENT. A construction manager-agent represents the

18 governmental entity in a fiduciary capacity.

19 Sec. 2264.205. USE OF ARCHITECT OR ENGINEER. (a) On or

20 before the selection of a construction manager-agent, the

21 governmental entity shall select or designate an architect or

22 engineer to prepare the construction documents for the project.

23 (b) The governmental entity's architect or engineer may not

24 serve, alone or in combination with another person, as the

25 construction manager-agent unless the architect or engineer is

26 hired to serve as the construction manager-agent under a separate

27 or concurrent selection process conducted in accordance with this

1 subchapter. This subsection does not prohibit the governmental
2 entity's architect or engineer from providing customary
3 construction phase services under the architect's or engineer's
4 original professional service agreement in accordance with
5 applicable licensing laws.

6 (c) To the extent that the construction manager-agent's
7 services are defined as part of the practice of architecture or
8 engineering under Chapter 1051 or 1001, Occupations Code, those
9 services must be conducted by a person licensed under the
10 applicable chapter.

11 Sec. 2264.206. SELECTION OF CONTRACTORS. A governmental
12 entity using the construction manager-agent method shall procure,
13 in accordance with applicable law and in any manner authorized by
14 this chapter, a general contractor or trade contractors who will
15 serve as the prime contractor for their specific portion of the
16 work.

17 Sec. 2264.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A
18 governmental entity shall select a construction manager-agent on
19 the basis of demonstrated competence and qualifications in the same
20 manner that an architect or engineer is selected under Section
21 2254.004.

22 Sec. 2264.208. INSURANCE. A construction manager-agent
23 selected under this subchapter shall maintain professional
24 liability or errors and omissions insurance in the amount of at
25 least \$1 million for each occurrence.

26 [Sections 2264.209-2264.250 reserved for expansion]

1 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

2 Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION
3 MANAGER-AT-RISK. (a) In this chapter, the "construction
4 manager-at-risk method" is a delivery method by which a
5 governmental entity contracts with an architect or engineer for
6 design and construction phase services and contracts separately
7 with a construction manager-at-risk to serve as the general
8 contractor and to provide consultation during the design and
9 construction, rehabilitation, alteration, or repair of a facility.

10 (b) A construction manager-at-risk is a sole
11 proprietorship, partnership, corporation, or other legal entity
12 that assumes the risk for construction, rehabilitation,
13 alteration, or repair of a facility at the contracted price as a
14 general contractor and provides consultation to the governmental
15 entity regarding construction during and after the design of the
16 facility. The contracted price may be a guaranteed maximum price.

17 (c) A governmental entity may use the construction
18 manager-at-risk method in selecting a general contractor for the
19 construction, rehabilitation, alteration, or repair of a facility
20 only as provided by this subchapter.

21 Sec. 2264.252. USE OF ARCHITECT OR ENGINEER. (a) On or
22 before the selection of a construction manager-at-risk, the
23 governmental entity shall select or designate an architect or
24 engineer to prepare the construction documents for the project.

25 (b) The governmental entity's architect or engineer for a
26 project may not serve, alone or in combination with another person,
27 as the construction manager-at-risk unless the architect or

1 engineer is hired to serve as the construction manager-at-risk
2 under a separate or concurrent selection process conducted in
3 accordance with this subchapter. This subsection does not prohibit
4 the governmental entity's architect or engineer from providing
5 customary construction phase services under the architect's or
6 engineer's original professional service agreement in accordance
7 with applicable licensing laws.

8 Sec. 2264.253. SELECTION PROCESS. (a) The governmental
9 entity shall select the construction manager-at-risk in a one-step
10 or two-step process.

11 (b) The governmental entity shall prepare a single request
12 for proposals, in the case of a one-step process, and an initial
13 request for qualifications, in the case of a two-step process, that
14 includes:

15 (1) a statement as to whether the selection process is
16 a one-step or two-step process;

17 (2) general information on the project site, project
18 scope, schedule, selection criteria and the weighted value for each
19 criterion, and estimated budget and the time and place for receipt
20 of the proposals or qualifications; and

21 (3) other information that may assist the governmental
22 entity in its selection of a construction manager-at-risk.

23 (c) The governmental entity shall state the selection
24 criteria in the request for proposals or qualifications.

25 (d) If a one-step process is used, the governmental entity
26 may request, as part of the offeror's proposal, proposed fees and
27 prices for fulfilling the general conditions.

1 (e) If a two-step process is used, the governmental entity
2 may not request fees or prices in step one. In step two, the
3 governmental entity may request that five or fewer offerors,
4 selected solely on the basis of qualifications, provide additional
5 information, including the construction manager-at-risk's proposed
6 fee and prices for fulfilling the general conditions.

7 (f) At each step, the governmental entity shall receive,
8 publicly open, and read aloud the names of the offerors. At the
9 appropriate step, the governmental entity shall also read aloud the
10 fees and prices, if any, stated in each proposal as the proposal is
11 opened.

12 (g) Not later than the 45th day after the date of opening the
13 final proposals, the governmental entity shall evaluate and rank
14 each proposal submitted in relation to the criteria set forth in the
15 request for proposals.

16 Sec. 2264.254. SELECTION OF OFFEROR. (a) The governmental
17 entity shall select the offeror that submits the proposal that
18 offers the best value for the governmental entity based on the
19 published selection criteria and on its ranking evaluation.

20 (b) The governmental entity shall first attempt to
21 negotiate a contract with the selected offeror.

22 (c) If the governmental entity is unable to negotiate a
23 satisfactory contract with the selected offeror, the governmental
24 entity shall, formally and in writing, end negotiations with that
25 offeror and proceed to negotiate with the next offeror in the order
26 of the selection ranking until a contract is reached or
27 negotiations with all ranked offerors end.

1 (d) Not later than the seventh day after the date the
2 contract is awarded, the governmental entity shall make the
3 rankings determined under Section 2264.253(g) public.

4 Sec. 2264.255. PERFORMANCE OF WORK. (a) A construction
5 manager-at-risk shall publicly advertise for bids or proposals and
6 receive bids or proposals from trade contractors or subcontractors
7 for the performance of all major elements of the work other than the
8 minor work that may be included in the general conditions.

9 (b) A construction manager-at-risk may seek to perform
10 portions of the work itself if:

11 (1) the construction manager-at-risk submits its bid
12 or proposal for those portions of the work in the same manner as all
13 other trade contractors or subcontractors; and

14 (2) the governmental entity determines that the
15 construction manager-at-risk's bid or proposal provides the best
16 value for the governmental entity.

17 Sec. 2264.256. REVIEW OF BIDS OR PROPOSALS. (a) The
18 construction manager-at-risk shall review all trade contractor or
19 subcontractor bids or proposals in a manner that does not disclose
20 the contents of the bid or proposal during the selection process to
21 a person not employed by the construction manager-at-risk,
22 architect, engineer, or governmental entity. All bids or proposals
23 shall be made available to the governmental entity on request and to
24 the public after the later of the award of the contract or the
25 seventh day after the date of final selection of bids or proposals.

26 (b) If the construction manager-at-risk reviews, evaluates,
27 and recommends to the governmental entity a bid or proposal from a

1 trade contractor or subcontractor but the governmental entity
2 requires another bid or proposal to be accepted, the governmental
3 entity shall compensate the construction manager-at-risk by a
4 change in price, time, or guaranteed maximum cost for any
5 additional cost and risk that the construction manager-at-risk
6 incurs because of the governmental entity's requirement that
7 another bid or proposal be accepted.

8 Sec. 2264.257. DEFAULT; PERFORMANCE OF WORK. If a selected
9 trade contractor or subcontractor defaults in the performance of
10 its work or fails to execute a subcontract after being selected in
11 accordance with this subchapter, the construction manager-at-risk
12 may itself fulfill, without advertising, the contract requirements
13 or select a replacement trade contractor or subcontractor to
14 fulfill the contract requirements.

15 Sec. 2264.258. PERFORMANCE OR PAYMENT BOND. (a) If a fixed
16 contract amount or guaranteed maximum price has not been determined
17 at the time the contract is awarded, the penal sums of the
18 performance and payment bonds delivered to the governmental entity
19 must each be in an amount equal to the construction budget, as
20 specified in the request for proposals or qualifications.

21 (b) The construction manager-at-risk shall deliver the
22 bonds not later than the 10th day after the date the construction
23 manager-at-risk executes the contract unless the construction
24 manager-at-risk furnishes a bid bond or other financial security
25 acceptable to the governmental entity to ensure that the
26 construction manager will furnish the required performance and
27 payment bonds when a guaranteed maximum price is established.

1 [Sections 2264.259-2264.300 reserved for expansion]

2 SUBCHAPTER G. DESIGN-BUILD METHOD

3 Sec. 2264.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In
4 this chapter, "design-build" is a project delivery method by which
5 a governmental entity contracts with a single entity to provide
6 both design and construction services for the construction,
7 rehabilitation, alteration, or repair of a facility.

8 Sec. 2264.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
9 EXCEPTIONS. This subchapter applies only to a facility that is a
10 building or an associated structure, including an electric utility
11 structure. This subchapter does not apply to:

12 (1) a highway, road, street, bridge, underground
13 utility, water supply project, water plant, wastewater plant, water
14 and wastewater distribution or conveyance facility, wharf, dock,
15 airport runway or taxiway, drainage project, or related type of
16 project associated with civil engineering construction; or

17 (2) a building or structure that is incidental to a
18 project that is primarily a civil engineering construction project.

19 Sec. 2264.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A
20 governmental entity may use the design-build method for the
21 construction, rehabilitation, alteration, or repair of a building
22 or associated structure only as provided by this subchapter. In
23 using that method, the governmental entity shall enter into a
24 single contract with a design-build firm for the design and
25 construction of the building or associated structure.

26 Sec. 2264.304. DESIGN-BUILD FIRMS. A design-build firm
27 under this subchapter must be a sole proprietorship, partnership,

1 corporation, or other legal entity or team that includes an
2 architect or engineer and a construction contractor.

3 Sec. 2264.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT
4 REPRESENTATIVE. The governmental entity shall select or designate
5 an architect or engineer independent of the design-build firm to
6 act as the governmental entity's representative for the duration of
7 the project.

8 Sec. 2264.306. PREPARATION OF REQUEST. (a) The
9 governmental entity shall prepare a request for qualifications that
10 includes general information on the project site, project scope,
11 budget, special systems, selection criteria and the weighted value
12 for each criterion, and other information that may assist potential
13 design-build firms in submitting proposals for the project.

14 (b) The governmental entity shall also prepare the design
15 criteria package that includes more detailed information on the
16 project. If the preparation of the design criteria package
17 requires architectural or engineering services that constitute the
18 practice of architecture within the meaning of Chapter 1051,
19 Occupations Code, or the practice of engineering within the meaning
20 of Chapter 1001, Occupations Code, those services shall be provided
21 in accordance with the applicable law.

22 (c) The design criteria package must include a set of
23 documents that provides sufficient information, including criteria
24 for selection, to permit a design-build firm to prepare a response
25 to the governmental entity's request for qualifications and to
26 provide any additional information requested. The design criteria
27 package must specify criteria the governmental entity considers

1 necessary to describe the project and may include, as appropriate,
2 the legal description of the site, survey information concerning
3 the site, interior space requirements, special material
4 requirements, material quality standards, conceptual criteria for
5 the project, special equipment requirements, cost or budget
6 estimates, time schedules, quality assurance and quality control
7 requirements, site development requirements, applicable codes and
8 ordinances, provisions for utilities, parking requirements, and
9 any other requirement.

10 (d) The governmental entity may not require offerors to
11 submit detailed architectural or engineering designs as part of a
12 proposal or a response to a request for qualifications.

13 Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For
14 each design-build firm that responded to the request for
15 qualifications, the governmental entity shall evaluate the firm's
16 experience, technical competence, and capability to perform, the
17 past performance of the firm and members of the firm, and other
18 appropriate factors submitted by the firm in response to the
19 request for qualifications, except that cost-related or
20 price-related evaluation factors are not permitted.

21 (b) Each firm must certify to the governmental entity that
22 each architect or engineer that is a member of the firm was selected
23 based on demonstrated competence and qualifications, in the manner
24 provided by Section 2254.004.

25 (c) The governmental entity shall qualify a maximum of five
26 responders to submit proposals that contain additional information
27 and, if the governmental entity chooses, to interview for final

1 selection.

2 (d) The governmental entity shall evaluate the additional
3 information submitted by the offerors on the basis of the selection
4 criteria stated in the request for qualifications and the results
5 of any interview.

6 (e) The governmental entity may request additional
7 information regarding demonstrated competence and qualifications,
8 considerations of the safety and long-term durability of the
9 project, the feasibility of implementing the project as proposed,
10 the ability of the offeror to meet schedules, or costing
11 methodology. As used in this subsection, "costing methodology"
12 means an offeror's policies on subcontractor markup, definition of
13 general conditions, range of cost for general conditions, policies
14 on retainage, policies on contingencies, discount for prompt
15 payment, and expected staffing for administrative duties. The term
16 does not include a guaranteed maximum price or bid for overall
17 design or construction.

18 (f) The governmental entity shall rank each proposal
19 submitted on the basis of the criteria set forth in the request for
20 qualifications.

21 Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) The
22 governmental entity shall select the design-build firm that submits
23 the proposal offering the best value for the governmental entity on
24 the basis of the published selection criteria and on its ranking
25 evaluations.

26 (b) The governmental entity shall first attempt to
27 negotiate a contract with the selected firm.

1 (c) If the governmental entity is unable to negotiate a
2 satisfactory contract with the selected firm, the governmental
3 entity shall, formally and in writing, end all negotiations with
4 that firm and proceed to negotiate with the next firm in the order
5 of the selection ranking until a contract is reached or
6 negotiations with all ranked firms end.

7 (d) Not later than the seventh day after the date the
8 contract is awarded, the governmental entity shall make the
9 rankings determined under Section 2264.307(f) public.

10 Sec. 2264.309. SUBMISSION OF DESIGN AFTER SELECTION. After
11 selection of the design-build firm, that firm's architects or
12 engineers shall submit all design elements for review and
13 determination of scope compliance to the governmental entity or the
14 governmental entity's architect or engineer before or concurrently
15 with construction.

16 Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The
17 design-build firm shall supply a set of construction documents for
18 the completed project to the governmental entity at the conclusion
19 of construction. The documents must note any changes made during
20 construction.

21 Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) A payment
22 or performance bond is not required and may not provide coverage for
23 the design portion of the design-build contract with the
24 design-build firm under this subchapter.

25 (b) If a fixed contract amount or guaranteed maximum price
26 has not been determined at the time the design-build contract is
27 awarded, the penal sums of the performance and payment bonds

1 delivered to the governmental entity must each be in an amount equal
2 to the construction budget, as specified in the design criteria
3 package.

4 (c) The design-build firm shall deliver the bonds not later
5 than the 10th day after the date the design-build firm executes the
6 contract unless the design-build firm furnishes a bid bond or other
7 financial security acceptable to the governmental entity to ensure
8 that the design-build firm will furnish the required performance
9 and payment bonds before construction begins.

10 [Sections 2264.312-2264.350 reserved for expansion]

11 SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

12 Sec. 2264.351. JOB ORDER CONTRACTING. In this chapter,
13 "job order contracting" is a procurement method used for
14 maintenance, repair, alteration, renovation, remediation, or minor
15 construction of a facility when the work is of a recurring nature
16 but the delivery times, type, and quantities of work required are
17 indefinite.

18 Sec. 2264.352. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
19 EXCEPTIONS. This subchapter applies only to a facility that is a
20 building, the design and construction of which is governed by
21 accepted building codes, or a structure or land, whether improved
22 or unimproved, that is associated with a building. This subchapter
23 does not apply to:

24 (1) a highway, road, street, bridge, utility, water
25 supply project, water plant, wastewater plant, water and wastewater
26 distribution or conveyance facility, wharf, dock, airport runway or
27 taxiway, drainage project, or related type of project associated

1 with civil engineering construction; or

2 (2) a building or structure that is incidental to a
3 project that is primarily a civil engineering construction project.

4 Sec. 2264.353. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR
5 FACILITIES. (a) A governmental entity may award job order
6 contracts for the maintenance, repair, alteration, renovation,
7 remediation, or minor construction of a facility if:

8 (1) the work is of a recurring nature but the delivery
9 times are indefinite; and

10 (2) indefinite quantities and orders are awarded
11 substantially on the basis of predescribed and prepriced tasks.

12 (b) The governmental entity shall establish the maximum
13 aggregate contract price when it advertises the proposal.

14 (c) The governing body of a governmental entity shall
15 approve each job order that exceeds:

16 (1) \$500,000 under the contract; or

17 (2) a lesser amount as established by the governing
18 body.

19 Sec. 2264.354. CONTRACTUAL UNIT PRICES. The governmental
20 entity may establish contractual unit prices for a job order
21 contract by:

22 (1) specifying one or more published construction unit
23 price books and the applicable divisions or line items; or

24 (2) providing a list of work items and requiring the
25 offerors to propose one or more coefficients or multipliers to be
26 applied to the price book or prepriced work items as the price
27 proposal.

1 Sec. 2264.355. COMPETITIVE SEALED PROPOSAL METHOD. (a) A
2 governmental entity may use the competitive sealed proposal method
3 under Subchapter D for job order contracts.

4 (b) The governmental entity shall advertise for, receive,
5 and publicly open sealed proposals for job order contracts.

6 (c) The governmental entity may require offerors to submit
7 information in addition to rates, including experience, past
8 performance, and proposed personnel and methodology.

9 Sec. 2264.356. AWARDED OF JOB ORDER CONTRACTS. The
10 governmental entity may award job order contracts to one or more job
11 order contractors in connection with each solicitation of
12 proposals.

13 Sec. 2264.357. USE OF JOB ORDER CONTRACT. A job order
14 contract may be used to accomplish work only for the governmental
15 entity that awards the contract unless:

16 (1) the solicitation for the job order contract and
17 the contract specifically provide for use by other persons; or

18 (2) the governmental entity enters into an interlocal
19 agreement that provides otherwise.

20 Sec. 2264.358. USE OF ARCHITECT OR ENGINEER. If a job order
21 contract or an order issued under the contract requires
22 architectural or engineering services that constitute the practice
23 of architecture within the meaning of Chapter 1051, Occupations
24 Code, or the practice of engineering within the meaning of Chapter
25 1001, Occupations Code, the governmental entity shall select or
26 designate an architect or engineer to prepare the construction
27 documents for the project.

1 Sec. 2264.359. JOB ORDER CONTRACT TERM. The base term for a
2 job order contract may not exceed two years. The governmental
3 entity may renew the contract annually for not more than three
4 additional years.

5 Sec. 2264.360. JOB ORDERS. (a) An order for a job or
6 project under a job order contract must be signed by the
7 governmental entity's representative and the contractor.

8 (b) The order may be:

9 (1) a fixed price, lump-sum contract based
10 substantially on contractual unit pricing applied to estimated
11 quantities; or

12 (2) a unit price order based on the quantities and line
13 items delivered.

14 Sec. 2264.361. PAYMENT AND PERFORMANCE BONDS. The
15 contractor shall provide payment and performance bonds, if required
16 by law, based on the amount or estimated amount of any order.

17 [Sections 2264.362-2264.400 reserved for expansion]

18 SUBCHAPTER I. ENFORCEMENT

19 Sec. 2264.401. VOID CONTRACT. (a) A contract, including a
20 job order, entered into in violation of this chapter and any bonds
21 issued in connection with the contract are voidable as against
22 public policy.

23 (b) An action to void a contract under this section does not
24 excuse the obligation of the governmental entity to pay for any
25 service performed or material delivered in good faith by a
26 contractor, architect, engineer, design-builder, or construction
27 manager before the date on which the contract is determined to be

1 void.

2 Sec. 2264.402. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
3 chapter may be enforced through an action for declaratory or
4 injunctive relief filed not later than the 10th day after the date
5 on which the contract is awarded.

6 (b) This section does not apply to enforcement of a contract
7 entered into by a state agency. In this subsection, "state agency"
8 has the meaning assigned by Section 2151.002. The term includes the
9 Texas Building and Procurement Commission.

10 SECTION 2.13. Section 252.048, Local Government Code, is
11 amended by adding Subsection (c-1) to read as follows:

12 (c-1) If a change order for a public works contract in a
13 municipality with a population of 500,000 or more involves a
14 decrease or an increase of \$100,000 or less, or a lesser amount as
15 provided by ordinance, the governing body of the municipality may
16 grant general authority to an administrative official of the
17 municipality to approve the change order.

18 SECTION 2.14. Section 271.054, Local Government Code, is
19 amended to read as follows:

20 Sec. 271.054. COMPETITIVE BIDDING REQUIREMENT. Before the
21 governing body of an issuer may enter into a contract requiring an
22 expenditure by or imposing an obligation or liability on the
23 issuer, or on a subdivision of the issuer if the issuer is a county,
24 of more than \$25,000, the governing body must:

25 (1) submit the proposed contract to competitive
26 bidding; or

27 (2) use an alternate method of project delivery

1 authorized by Chapter 2264, Government Code.

2 SECTION 2.15. Section 271.060, Local Government Code, is
3 amended by amending Subsection (b) and adding Subsection (c) to
4 read as follows:

5 (b) The total price of a contract may not be increased by a
6 change order unless provision has been made for the payment of the
7 added cost by the appropriation of current funds or bond funds for
8 that purpose, by the authorization of the issuance of certificates,
9 or by a combination of those procedures.

10 (c) A contract with an [The] original contract price of \$1
11 million or more may not be increased by more than 25 percent. If a
12 change order for a contract with an original contract price of less
13 than \$1 million increases the contract amount to \$1 million or more,
14 subsequent change orders may not increase the revised contract
15 amount by more than 25 percent. [The original price may not be
16 decreased by more than 25 percent without the consent of the
17 contractor.]

18 SECTION 2.16. Section 431.101(g), Transportation Code, is
19 amended to read as follows:

20 (g) A local government corporation [~~created by a navigation~~
21 ~~district~~] must comply with all state law related to the design and
22 construction of projects, including the procurement of design and
23 construction services, that applies to the local government
24 [~~navigation district~~] that created the corporation.

25 SECTION 2.17. Subchapter D, Chapter 431, Transportation
26 Code, is amended by adding Section 431.110 to read as follows:

27 Sec. 431.110. COMPETITIVE BIDDING EXCEPTION FOR CERTAIN

1 IMPROVEMENTS. Any competitive bidding requirement or restriction
2 on a local government that created a local government corporation
3 does not apply to an expenditure by the local government
4 corporation for:

5 (1) an improvement:

6 (A) that is constructed in a reinvestment zone;

7 and

8 (B) the construction of which is managed by a
9 private venture participant; or

10 (2) an improvement constructed by the corporation for
11 which more than 50 percent of the construction is funded by a
12 private entity.

13 ARTICLE 3. ADDITIONAL EXEMPTIONS

14 SECTION 3.01. Section 44.901, Education Code, is amended by
15 adding Subsection (j) to read as follows:

16 (j) Chapter 2264, Government Code, does not apply to this
17 section.

18 SECTION 3.02. Section 51.927, Education Code, is amended by
19 adding Subsection (k) to read as follows:

20 (k) Chapter 2264, Government Code, does not apply to this
21 section.

22 SECTION 3.03. Section 2166.406, Government Code, is amended
23 by adding Subsection (k) to read as follows:

24 (k) Chapter 2264 does not apply to this section.

25 SECTION 3.04. Chapter 302, Local Government Code, is
26 amended by adding Section 302.006 to read as follows:

27 Sec. 302.006. EXEMPTION FROM OTHER CONTRACTING LAW.

1 Chapter 2264, Government Code, does not apply to this chapter.

2 SECTION 3.05. Subchapter E, Chapter 335, Local Government
3 Code, is amended by adding Section 335.077 to read as follows:

4 Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW.
5 Chapter 2264, Government Code, does not apply to this chapter.

6 SECTION 3.06. Section 22.084, Transportation Code, is
7 amended by adding Subsection (c) to read as follows:

8 (c) Chapter 2264, Government Code, does not apply to an
9 agreement entered into under this section.

10 SECTION 3.07. Section 370.305, Transportation Code, is
11 amended by adding Subsection (c-1) to read as follows:

12 (c-1) Chapter 2264, Government Code, does not apply to
13 agreements entered into pursuant to this section.

14 SECTION 3.08. Subchapter Q, Chapter 451, Transportation
15 Code, is amended by adding Section 451.8025 to read as follows:

16 Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.
17 Chapter 2264, Government Code, does not apply to this subchapter.

18 SECTION 3.09. Subchapter C, Chapter 452, Transportation
19 Code, is amended by adding Section 452.1095 to read as follows:

20 Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR
21 CERTAIN AUTHORITIES. Chapter 2264, Government Code, does not apply
22 to an authority consisting of one subregion governed by a
23 subregional board created under Subchapter O.

24 SECTION 3.10. Section 60.401, Water Code, is amended by
25 adding Subsection (d) to read as follows:

26 (d) Chapter 2264, Government Code, does not apply to this
27 subchapter.

1 SECTION 3.11. Section 60.452, Water Code, is amended by
2 adding Subsection (c) to read as follows:

3 (c) Chapter 2264, Government Code, does not apply to this
4 subchapter.

5 ARTICLE 4. CONFORMING AMENDMENT

6 SECTION 4.01. Section 252.021(a), Local Government Code, is
7 amended to read as follows:

8 (a) Before a municipality may enter into a contract that
9 requires an expenditure of more than \$25,000 from one or more
10 municipal funds, the municipality must:

11 (1) comply with the procedure prescribed by this
12 subchapter and Subchapter C for competitive sealed bidding or
13 competitive sealed proposals;

14 (2) use the reverse auction procedure, as defined by
15 Section 2155.062(d), Government Code, for purchasing; or

16 (3) comply with a method described by Chapter 2264,
17 Government Code [~~Subchapter H, Chapter 271~~].

18 ARTICLE 5. REPEALER

19 SECTION 5.01. The following are repealed:

20 (1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038,
21 44.039, 44.040, and 44.041, Education Code;

22 (2) Sections 2166.2511, 2166.2526, 2166.2531,
23 2166.2532, 2166.2533, and 2166.2535, Government Code;

24 (3) Section 252.043(d-1), Local Government Code;

25 (4) Subchapter H, Chapter 271, Local Government Code;

26 and

27 (5) Section 431.101(e), Transportation Code.

1 ARTICLE 6. TRANSITION; EFFECTIVE DATE

2 SECTION 6.01. (a) The changes in law made by this Act apply
3 only to a contract or construction project for which a governmental
4 entity first advertises or otherwise requests bids, proposals,
5 offers, or qualifications, or makes a similar solicitation, on or
6 after the effective date of this Act.

7 (b) A contract or construction project for which a
8 governmental entity first advertises or otherwise requests bids,
9 proposals, offers, or qualifications, or makes a similar
10 solicitation, before the effective date of this Act is governed by
11 the law as it existed immediately before the effective date of this
12 Act, and that law is continued in effect for that purpose.

13 SECTION 6.02. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 447 was passed by the House on April 19, 2007, by the following vote: Yeas 142, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 447 on May 21, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 447 on May 27, 2007, by the following vote: Yeas 148, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 447

I certify that H.B. No. 447 was passed by the Senate, with amendments, on May 17, 2007, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 447 on May 27, 2007, by the following vote: Yeas 29, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor